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No.

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

October Term 1986

*PHILIP J. CLOUGH, ROSWELL E. HUBBARD,
JOHN F. McDERMOTT and RICHARD G. MIEKKA*

PETITIONERS

v.

COMMISSIONER OF PATENTS

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

PETITION

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5017

**QUESTIONS PRESENTED
FOR REVIEW**

This Petition presents the following questions:

1. May the Federal Circuit affirm a rejection of claims as "obvious" based on the opinion below without giving any analysis of that opinion, or must the Federal Court consider whether there is legal error, and also whether underlying findings are either nonprobative or clearly erroneous?

2. May the Federal Circuit justify a dismissal of subject matter based on failure to comply with technicalities,

where there was full compliance with the written directives of a patent examiner?

3. Can the Federal Circuit affirm the rejection of claims for which no reason for rejection is given by the Board?

LIST OF PARTIES

1. Philip J. Clough,

Roswell E. Hubbard,

John F. McDermott,

Richard G. Miekka, Petitioners

2. Commissioner of Patents and Trademarks,
Respondent.

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IN THE

SUPREME COURT OF THE UNITED STATES

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Federal Circuit in its case No. 86-957. The judgment was entered on November 13, 1986.

OPINIONS BELOW

The opinion of the Court of Appeals is unreported and is reprinted in the Appendix to this Petition commencing at page 1a. The Court of Appeals affirmed an unreported decision of the Patent Office Board of Appeals reprinted commencing at page 6a.

JURISDICTION

This Court has jurisdiction over the judgment entered November 13, 1986 by virtue of 28 U.S.C., Section 1254(1).

**THE CONSTITUTIONAL PROVISIONS AND
STATUTES INVOLVED**

U.S. Constitution, Amendment V

"No person shall ... be deprived of life, liberty or property, without due process of law..."

35 U.S.C., Section 101

Inventions Patentable

"Whoever invents or discovers any new and useful process...or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title."

35 U.S.C., Section 103

Conditions for patentability; non-obvious subject matter.

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

STATEMENT OF THE CASE

(a) The Invention

This case originated as an application for patent in the U.S. Patent Office under 35 U.S.C. 101-103 for a method of metallizing a support, composed of paper by providing a plastic sheet with a wax release layer and an overlying metallic film.

The invention relates to three different aspects of a process for applying a metallic film to a carrier and then transferring the metallic film to the final product, which is a metallized sheet.

In the first aspect of the process, a wax is employed as a release medium to facilitate removal of the metallic film from the carrier and transfer to the final product.

In the second aspect of the process, the carrier of the metallic film is reused a number of times in proportion to the thickness of the carrier. A separate reuse is permitted for each 0.1 mil thickness of the carrier, after which the carrier is no longer reusable.

In the third aspect of the process, the carrier for the metallic film is subjected to a corona (ion discharge) treatment in order to suitably prepare the carrier for the metallized film.

(b) The Examiner's Action

The Examiner made a final rejection of claims 1-22 and 30 and the case was appealed to the Board of Appeals.

(c) The Decision of the Board of Appeals

The final rejection by the Examiner of claims 1-22 and 30 was affirmed by the Board on the following grounds:

A) The applied references (Lorenz and Bonjour) were said to disclose a "method of metallizing a support member which substantially corresponds to appellants [sic] basic method."

B) Reference Lorenz provides "first both a support member ... and a plastic sheet with a wax release layer" and an overlying metallic film.

C) The recitation in the claims of "a wax" reads on either a solid or liquid wax and is therefore broad enough to include the "paraffin containing release agents" of reference Lorenz.

D) Since "either paper or fabric may be utilized as the support member" in reference Lorenz, "it would have been obvious to metallize a paper support" in accordance with reference Bonjour.

E) Since the claims recite "metallizing either a paper or resin-containing support" it would have been obvious to metallize a resin-coated paper sheet.

(e) The Decision of the Federal Circuit

The Federal Circuit affirmed the Examiner's final rejection of claims 4-10, 12, 13, 15, 17-22 and 30 solely on the basis of the Board's opinion.

The rejection of claims 1-3, 11, 14 and 16 was affirmed on the basis that appellant had "intentionally failed to respond to the new ground of rejection" within the two month statutory time period.

ARGUMENT

I. THE FEDERAL CIRCUIT AFFIRMED A REJECTION OF CLAIMS AS OBVIOUS BASED ON THE OPINION BELOW WITHOUT ANY ANALYSIS OF THAT OPINION, WHICH IS IN ERROR BECAUSE THE TRANSFER METALIZATION OF THE INVENTION NOT ONLY EMPLOYS A WAX RELEASE LAYER THAT IS NOT SUGGESTED BY THE REFERENCES, BUT ALSO THE BASIC REFERENCE DOES NOT HAVE A WAX RELEASE LAYER AND IS NOT COMBINABLE WITH THE REMAINING REFERENCES.

The Federal Circuit has acknowledged its obligations that in reviewing a judgment based on a conclusion of obviousness under 35 USC 103, it must consider not only

whether there is legal error, but also whether the underlying findings are either nonprobative, or clearly erroneous, or both. **Panduit Corp. v. Dennison Mfg. Co.**, Appeal No. 85-1144 (CAFC 1987), pp. 3 and 4. The Federal Circuit failed to exercise this obligation in the present case.

**(a) Basic Reference Lorenz Does Not Have a
Wax Release Layer; the Board's Finding
Is Clearly Erroneous**

The Board stated that Lorenz provides a plastic sheet "with a wax release layer thereon". What, in fact, is disclosed by Lorenz (Col. 2, lines 31 and 32) is "paraffin oil". Lorenz emphasizes (in Col. 1 at lines 25-30) that paraffin oil as a release is used because of its low volatility. Such release would be completely unsuitable for the invention

since it would completely interfere with Appellants' metallization process.

It is apparent that there is a significant distinction between an oil and a wax, i.e., a liquid and a solid. It is well known that there are three states of matter and it would be inappropriate to argue that because ice and water vapor are forms of water, a teaching on water vapor would suggest the use of ice. Different states of matter are entitled to different considerations.*

Moreover, paraffin oil, as a liquid, cannot qualify as a wax. "Wax" is defined in the Condensed Chemical Dictionary, 9th Edition, Van Nostrand 1977 (page 924) as:

* The Board states that there are "wax containing release coatings" in Reference Backwell (at Col. 1, lines 50-56), but reference to the citation indicates that Backwell is referencing the transfer polymer, not a release coating.

"A low-melting organic mixture or compound of high molecular weight, solid at room temperature and generally similar in composition to fats and oils except that it contains no glyceride." (emphasis added)

This same dictionary defines "paraffin oil" as:

"An oil either pressed or dry-distilled from paraffin distillate. Liquid petroleum is also known as paraffin oil. Combustible."

It is, thus, incorrect for the Board to say that Lorenz teaches a "wax release" layer. Lorenz teaches paraffin oil. Oil is not a wax and would be unsuitable for the practice of the invention, because its low volatility would interfere with Appellants' metallization.*

* Appellants' metallization involves an entire film or layer; Bonjour and Lorenz have discontinuous pattern effects and are not concerned about the surface imperfections that attend the use of a volatile release (paraffin oil).

The Board states that the claimed recitation of "wax" reads on either "solid or liquid waxes". The term "liquid wax" is a misnomer that would not be used by one of ordinary skill in the art. A "liquid wax" literally means a "liquid solid". It is akin to calling water "liquid ice".

As noted, different states of matter have distinctively different properties. Thus, a liquid has different properties than a solid. It is a complete distortion of the terminology of persons of ordinary skill in the art to say that a liquid substance suggests a solid substance.

(b) Lorenz is not Combinable with Secondary Reference Bonjour to Teach the Invention; the Contrary Finding to this Effect is Clearly Erroneous.

The Board has acknowledged, as contended by Appellants, that Bonjour does not teach metallizing a paper support. This is a specific requirement of claims 7-10 and 30. Bonjour also does not teach a wax release layer. Nor, as noted above, does Lorenz. Even if the Board were correct in stating that it would be obvious to metallize a paper support in accordance with the procedure in Bonjour, that procedure would not include the use of Applicant's wax release layer, because there is no wax release layer in Bonjour.

Moreover, even if the combination of Bonjour and Lorenz were to include a wax release, the invention, which requires transferring a metal film^{*}, would not be realized. Bonjour deals entirely with a fabric and Lorenz is confined to a fabric-like effect, i.e., to produce a metallic pattern effect by using a "non-continuous" adhesive. There are no metallic films in either Lorenz or Bonjour.

(c) Lorenz and Bonjour Do Not Suggest Metallizing a Sheet with a Clay-Resin Coating; the Contrary Finding is Clearly Erroneous.

The Board has made specific reference to claim 9 which calls for a paper sheet that is size-press coated with a water

^{*} "a fine, thin skin surface layer or coating".

dispersion of clay and resin before receiving a transfer. As to this, the Board merely states that "the art of record fairly teaches metallizing either paper or resin containing supports" so that "to metallize a resin coated paper sheet" would be obvious.

The facts are that Bonjour does not have a paper sheet and Lorenz suggests paper only in passing (col. 2, line 21) without any suggestion of resin on the paper. Moreover, this argument of the Board overlooks the fact that the coating on the paper is not merely resin, it is a water dispersion of clay and resin. There is simply no suggestion anywhere in the references of the use of a water dispersion of clay and resin.

**(d) Bonjour and Lorenz Do Not Suggest
Appellants' Modifiers; the Contrary
Finding Is Clearly Erroneous**

With respect to claim 15, the Board has stated that "Bonjour fairly suggests utilizing thermoplastic layers which include modifiers". The word "modifiers" nowhere appears in Bonjour.

Claim 15 recites specific viscosity modifiers. Not one of these viscosity modifiers is mentioned in Bonjour. The specific thermoplastic adhesives contemplated by Bonjour are set forth in column 4, beginning at line 38. These are acrylic or vinyl monomers or copolymers, including homopolymers and copolymers of acrylic acid, methylacrylic acid and lower alkyl esters, e.g., methyl acrylate, ethyl acrylate, isopropyl acrylate, methyl methacrylate, ethyl methacrylate, isopropyl

methacrylate, vinyl acetate, vinyl chloride, vinylidene chloride, vinyl alcohol, vinylpyrrolidine, etc.

By contrast, the materials recited by claim 15 are amine esters, sulphated oils, colloidal silicas, polyoxylalkylene, fatty acid esters, starches, carboxylated cross-linked acrylic emulsions, methyl vinyl ether maleic anhydrides and carboxylated methyl celluloses. The statement by the Board that Bonjour suggests utilizing thermoplastic layers with modifiers is simply not supported by the Record.

(e) Bonjour and Lorenz Do Not Suggest Appellants' Temperatures and Pressures; the Contrary Finding Is Clearly Erroneous

With respect to illustrative claims 21 and 22, Appellants have set forth a specific

range of 230° to 275°F. and a specific pressure range of 400 to 1000 lbs. per lineal inch. These temperature and pressure ranges are not to be found in Bonjour contrary to the statement by the Board. Indeed, the temperature in Bonjour is 90 - 100°C., corresponding to 194 - 212°F. This is below the range that is specifically required for the invention. As far as pressure is concerned, Bonjour is completely silent.

(f) Applicant's Transfer Metallization

With a Resuable Carrier in Proportion to the Thickness of the Carrier With One Reuse for Each 1/10th mil Thickness Is Not Disclosed or Suggested by the References.

In sustaining the rejection of exemplary claims 4, the Board has stated

that it is "satisfied that the disclosure in Backwell would render the herein claimed steps of remetallizing and reusing the support member obvious within the meaning of section 103". BUT BACKWELL DOES NOT EMPLOY METALLIZATION. Backwell is completely nonanalogous. Backwell does not transfer metal. Indeed, he employs metallic clad carriers to transfer polymer coatings. The transfer of a metal is an entirely different matter than the transfer of a polymer coating. In addition, the Backwell carriers are of durable materials that can be used repeatedly. The clear teaching in Backwell is that the number of reuses is independent of thickness.

This is entirely different than what is disclosed and suggested by the present specification and claims 4-6.

**(g) Transfer Metallization with a Corona
Treated Carrier Is Not Suggested by the
Art.**

In rejecting claim 20 the Board has stated that reference Ohtusuki renders it obvious to utilize a plastic sheet which has been subjected to preliminary corona treatment. The Board also stated "appellants have not presented any arguments to the contrary".

These statements are incorrect. Appellants' Attorney noted at the oral hearing that Ohtusuki does not have an appropriate teaching with respect to claim 20 and advised the Board that the Examiner meant to reject claim 20 on this basis instead of Claim 15. The argument made before the Board, and repeated here is that the rejection on Ohtusuki is misapplied.

The invention of corona treatment in Ohtusuki, (col. 2, lines 23-26) is that it produced a limited improvement in bond strength "and an adhesive is additionally used". Thus, Ohtusuki teaches away from the invention.

Ohtusuki and the invention are quite different. Ohtusuki is not involved with metallization or the transfer of a metallic film from a carrier. To the contrary, Ohtusuki prepares a retort-proof metallic layer laminate for packaging foodstuffs using aluminum hydroxide modified copolymers as adhesives. This is entirely unrelated to the invention, which seeks to transfer a metal film from a carrier to a sheet of material. Even if Ohtusuki were in a parallel art, it would suggest to a person of ordinary skill that corona treatment is to be avoided where a release is sought

because the corona would increase bonding strength. Moreover, the teaching in Ohtusuki is that "an adhesive is additionally used". There is simply no suggestion whatsoever in Ohtusuki that a corona treatment should be used where a release characteristic is sought.

II. THE FEDERAL CIRCUIT IMPROPERLY UPHELD A DISMISSAL OF SUBJECT MATTER ON TECHNICALITIES AT VARIANCE WITH THE ORIGINAL WRITTEN DIRECTIVES OF THE ADMINISTRATIVE AGENCY INVOLVED.

In dismissing claims 1, 2, 3, 11, 14, and 16 the Board stated that Page 5 of the Examiner's Answer advised Appellants that "Failure to respond to the new Grounds of Rejection within two months will result in

dismissal of the Appeal of the claims so rejected". (emphasis added).

The Examiner's Answer does not contain the wording stated by the Board.

Page 5 states: "In view of the new Ground of Rejection, Applicant has two months from mailing date of this Answer in which to file a Reply". Page 5 continues: "Such Reply may include any amendment or material appropriate to the new ground". There is nothing in this statement to indicate that if a reply is not made within two months, the claims would be dismissed.

Page 5 next states: "Failure to respond to the new ground of rejection will result in dismissal of the appeal of the claims so rejected". As noted above, Appellants' Attorney did respond to the new Ground of Rejection at the Oral Hearing and requests

that the dismissal of the Claims for failure to respond be reversed.

III. THE FEDERAL CIRCUIT IMPROPERLY AFFIRMED THE REJECTION OF CLAIMS FOR WHICH NO REASON WAS GIVEN BY THE BOARD.

The decision of the Board made findings only with respect to claims 4, 9, 15, 20, 21, and 22. The remaining non-dismissed claims 5, 6, 7, 8, 10, 12, 13, 17, 18, 19 have been the subject of no findings whatsoever.

The failure of the Board to make any findings as to these claims and to simply dismiss them as being obvious, is inappropriate. Each claim requires analysis. The Board has failed to do so.

CONCLUSIONS

For the reasons given above, the decision of the Federal Circuit should be reversed.

(a) The Findings of the Board are Clearly Erroneous.

Neither reference Bonjour nor Lorenz teaches the use of a wax release layer in transfer metallization.

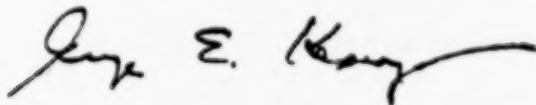
Reference Backwell, which has been cited for teaching a reusable material, is from a nonanalogous art. It has to do with the transfer of a polymer and not the transfer of a metal. The problems associated with transferring a metal are entirely different than those for transferring a polymer. Backwell also does not have any release layer, wax or otherwise.

Finally, the citation of reference Ohtusuki, simply because it suggests corona treatment, is completely inappropriate. The entire teaching in Ohtusuki is that a corona treatment does not provide a sufficient improvement in bond strength, so that an adhesive must be used as well. The invention not only employs different materials, it also uses a corona treatment in the context of a release of an overlying metallic film as opposed to an increased bonding of the film to the underlying carrier.

(b) Claims 1, 2, 3, 11, 14 and 16 Were Improperly Dismissed.

(c) No Findings Were Made as to Claims 5, 6, 7, 8, 10, 12, 13, 17, 18 and 19,

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "George E. Kersey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

George E. Kersey
Attorney for Appellant

Of Counsel:

Barry D. Josephs, Esq.

Thomas O. Hoover, Esq.

APPENDIX

IN RE PHILIP J. CLOUGH) Appeal No.
) 86-957

DECIDED: November 13, 1986

Before FRIEDMAN and BALDWIN, Circuit Judges,
and MILLER, Senior Circuit Judge.

PER CURIAM.

DECISION

The decision of the United States Patent and Trademark Office Board of Patent Appeals and Interferences (board) sustaining the final rejection of claims 4-10, 12, 13, 15, 17-22, and 30, and dismissing claims 1-3, 11, 14 and 16 of application No. 313,396, is affirmed.

OPINION

This is an appeal from an adverse decision regarding claims 1-22 and 30 in a patent application entitled "Metallization of Support Members." The decision of the board sustaining the final rejection of claims 4-10, 12, 13, 15, 17-22, and 30 on the grounds of 35 U.S.C. 103 is affirmed on the basis of the board's opinion.

The board dismissed the appeal of the rejection of claims 1-3, 11, 14 and 16 on the basis that appellant had intentionally failed to respond to the new ground of rejection raised in the Examiner's Answer within the two month statutory time period. The dismissal by the board of appeals of these claims was correct under the applicable regulations and procedures.

The time period for reply to an examiner's new grounds of rejection raised in the Examiner's Answer is limited to two months. 37 C.F.R. 1.193(b). If additional time is needed, an extension of time up to four months will be granted upon a showing of sufficient cause. 37 C.F.R. 1.136(b). Appellant, however, was informed of the two month time period and did not request additional time.

If appellants' failure to respond had been demonstrated to have been unintentional, the Manual of Patent Examining Procedure (MPEP) 1208.01 provides a procedure whereby the appellant may file a supplemental brief within one month. However, appellants have not argued that theirs was an unintentional or inadvertant omission or failure to respond.

Appellants' failure to respond was not remedied, as they argue, by arguments later presented orally at the hearing. A written response to every ground of rejection in an appeal is necessary. See MPEP 1208.01. Appellants are reminded in this section that "their briefs in appealed cases must be responsive to every ground of rejection stated by the examiner, including new grounds stated in his answer." Section 1208.01 also specifies that oral argument at

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a hearing will not remedy the failure to respond.

Art Unit 131

Paper No. 12

MAILED

JAN. 8 1986

Appeal No. 601-17

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PAT. & T.M. OFFICE

Heard:

BOARD OF APPEALS

November 6, 1985

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte Philip J. Clough,
Roswell E. Hubbard,
John F. Mc Dermott
and
Richard G. Miekka

- - -

Application for Patent filed October
21, 1981, Serial No. 313,396. Metallization
of Support Members.

George E. Kersey et al. for appellants.

Primary Examiner - Edward Kimlin.

Before Merker, Seidleck and Caroff,
Examiners-in-Chief.
Seidleck, Examiner-in-Chief

This appeal involves claims 1 through 22 and 30. Claims 23 through 29, the only other claims in the case, stand withdrawn from consideration under the provisions of 37 CFR 1.142.

Claim 1 is illustrative and reads as follows:

1. The method of metallizing a support member which comprises the steps of:

- (1) providing a support member;
- (2) providing a plastic sheet with a wax release layer thereon and an overlying metallic film.

(3) forming composite of the support member and the metallized sheet, with a thermoplastic layer therebetween facing said metallic layer;

(4) rendering said thermoplastic layer flowable; and

(5) cooling said composite and stripping said plastic sheet therefrom to leave said support member with said metallic layer adhered thereto by said thermoplastic layer.

The following references have been relied upon by the examiner:

Lorenz	3,080,270	Mar. 5, 1963
Bonjour	3,589,962	June 29, 1971
Backwell	3,620,872	Nov. 16, 1971
Ohtusuki et al		
(Ohtusuki)	4,308,084	Dec. 29, 1981
Grimes	WO 79/00103	Mar. 8, 1979

The examiner's answer dated June 13, 1984 included three new grounds of rejection. These rejections are as follows:

(a) Claims 1, 2 and 3 under 35 U.S.C. 102 as being anticipated by Lorenz.

(b) Claims 11, 14 and 16 under 35 U.S.C. 103 as unpatentable over Bonjour and Lorenz in view of Grimes (newly cited by the examiner in his answer).

(c) Claim 14 under 35 U.S.C. 112, second paragraph, as being indefinite due to the lack of antecedent basis for the recitation "said viscosity modifier."

At page 5 of the examiner's answer appellants were advised that failure to respond to the new grounds of rejection within two months will result in dismissal of the appeal of the claims so rejected. In view of the fact that appellants did not respond to these new grounds of rejections by way of brief, and since appellants' failure to respond appears to have been intentional, the appeal as to claims 1, 2,

3, 11, 14 and 16 is dismissed. Appellants are also advised that any arguments presented at the oral hearing of Nov. 6, 1985 did not remedy the deficiency of a brief.

Thus, the following rejections under 35 U.S.C. 103 are before us for our consideration:

(I) Claims 7, 8, 9, 10, 12, 13, 15, 17 through 22 and 30 as unpatentable over Bonjour in view of Lorenz.

(II) Claims 4, 5 and 6 as in (I) in further view of Blackwell.

(III) Claim 15 as in (I) in further view of Ohtusuki.

With respect to rejection III, it is evident from page 4 of the final rejection that the examiner's reference to claim 15 was inadvertent and that claim 20 which requires a preliminary corona discharge was

intended. We will, accordingly, treat rejection III as being directed to claim 20 rather than claim 15.

We have carefully considered all of appellants' arguments but do not find same persuasive of reversible error in the examiner's position. We will, accordingly, sustain each of the aforementioned rejections designated (I), (II) and (III).

The Lorenz and Bonjour references, as noted by the examiner, disclosed a method of metallizing a support member which substantially corresponds to appellants basic method. Thus, Lorenz teaches providing first both a support member, including paper, and a plastic sheet with a wax release layer thereon and an overlying metallic film. Patentee teaches forming a composite of the support member and the metallized sheet having a thermoplastic

layer adhesive therebetween facing the metallic layer. The adhesive is rendered flowable, the composite is then cooled and the plastic sheet is finally stripped from the composite, note columns 1 and 2 of Lorenz. The claimed recitation "a wax" reads on either solid or liquid waxes and is therefore broad enough to include the paraffin containing release agents of Lorenz.

Admittedly, as pointed out by appellants, Bonjour does not teach metallizing a paper support. However, several of the claims before us merely call for "a support member" which includes the fabric support of Bonjour. Moreover, since Lorenz teaches that either paper or fabric may be utilized as the support member, it would have been obvious to metallize a paper support in accordance with the procedure

described in Bonjour. We also note that the Backwell reference relied upon by the examiner suggests the use of wax containing release coatings, col. 1, lines 50 to 56.

With respect to claim 4, for example, we are satisfied that the disclosure in Blackwell would render the herein claimed steps of remetalizing and reusing the support member obvious within the meaning of section 103. Determining how many times a particular support material may be reused amounts to nothing more than routine experimentation well within the skill of the art.

In view of the fact that the art of record fairly teaches metallizing either paper or resin containing supports, we are satisfied that it would have been entirely obvious to metallize a resin coated paper sheet as called for in claim 9, for example.

With respect to claim 15, we note that Bonjour fairly suggests utilizing thermoplastic layers which include modifiers. Bonjour also fairly teaches subjecting the composite to heat and pressure as called for in claims 21 and 22, for example.

As to claim 20, we agree with the examiner that Ohtusuki renders it obvious to utilize a plastic sheet which has been subjected to preliminary corona treatment. We note that appellants have not presented any arguments to the contrary.

In summary, the appeal as to claims 1, 2, 3, 11, 14 and 16 is dismissed and the examiner's rejections of claims 4 through 10, 12, 13, 15, 17 through 22 and 30 are affirmed.

The decision of the examiner is affirmed.

Affirmed

Evelyn K. Merker)
Examiner-in-Chief)
)
)
)
James A. Seidleck)
Examiner-in-Chief)
)
)
)
Marc L. Caroff)
Examiner-in-Chief)

BOARD
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AND
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